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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2010-0005]

RIN 0579-AD36

Importation of Bromeliad Plants in Growing Media From Belgium, Denmark, and the Netherlands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of plants and plant products to add Bromeliad plants of the genera Aechmea, Cryptanthus, Guzmania, Hohenbergia, Neoregelia, Tillandsia, and Vriesea from Belgium, Denmark, and the Netherlands to the list of plants that may be imported into the United States in an approved growing medium, subject to specified growing, inspection, and certification requirements. We are taking this action in response to requests from those three countries and after determining that the plants can be imported, under certain conditions, without resulting in the introduction into, or the dissemination within, the United States of a plant pest or noxious weed.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. William Aley, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301)-734-5057.

## SUPPLEMENTARY INFORMATION:

### Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds. The regulations in "Subpart--Plants for Planting," §§ 319.37 through 319.37-14 (referred to below as the regulations) contain, among other things, prohibitions and restrictions on the importation of plants, plant parts, and seeds for propagation.

Paragraph (a) of § 319.37-8 requires, with certain exceptions, that plants offered for importation into the United States be free of sand, soil, earth, and other growing media. This requirement is intended to help prevent the introduction of plant pests that might be present in the growing media; the exceptions to the requirement take into account factors that mitigate that plant pest risk. Those exceptions, which are found in paragraphs (b) through (e) of § 319.37-8, consider either the origin of the plants and growing media (paragraph (b)), the nature of the growing media (paragraphs (c) and (d)), or the use of a combination of growing conditions, approved media, inspections, and other requirements (paragraph (e)).

Paragraph (e) of § 319.37-8 provides conditions under which certain plants established in growing media may be imported into the United States. In addition to specifying the types of plants that may be imported, § 319.37-8(e) also, among other things, specifies the types of growing media that may be used.

On March 15, 2011, we published in the Federal Register (76 FR 13890-13892, Docket No. APHIS-2010-0005) a proposal<sup>1</sup> to amend the regulations governing the importation of plants and plant products to add Bromeliad plants of the genera Aechmea, Cryptanthus, Guzmania,

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<sup>1</sup>To view the proposed rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0005>.

Hohenbergia, Neoregelia, Tillandsia, and Vriesea from Belgium, Denmark, and the Netherlands to the list of plants that may be imported into the United States in an approved growing medium, subject to specified growing, inspection, and certification requirements. The Animal and Plant Health Inspection Service (APHIS) took this action in response to requests from those three countries and after determining that the plants could be imported, under certain conditions, without resulting in the introduction into, or the dissemination within, the United States of a plant pest or noxious weed.

We solicited comments concerning our proposal for 60 days ending May 16, 2011. We received eight comments by that date. They were from a domestic grower, a domestic growers' association, a State Government, and two foreign exporters. They are discussed below by topic.

The comment from the domestic growers' association focused on the possible economic impacts of the proposed rule on domestic importers and growers of Bromeliads. The commenter stated that in the initial regulatory flexibility analysis (IRFA) that we made available to the public along with the proposed rule, we underestimated both the number of domestic nurseries that import Bromeliad plants from Belgium, Denmark, and the Netherlands and the potential economic impact on those nurseries. Noting that in the IRFA, we acknowledged the possibility that a few nurseries could be affected by the proposed rule to the extent that they would be eliminated from the marketing chain, the commenter stated that we neglected to consider the direct and indirect economic impacts that the closure of such nurseries could have on local economies due to the loss of jobs.

We appreciate the additional information submitted by the commenter on the potential economic effects of the rule for Florida nurseries. We acknowledged in the IRFA that we did not know exactly how many U.S. nurseries import Bromeliad plants from Belgium, Denmark, and

the Netherlands, but estimated their number to be no more than three. Based upon a survey it conducted in April 2011, the association represented by the commenter found that there are seven such nurseries in the State of Florida. We agree that these are businesses that will be directly affected by the rule.

We also agree with the commenter that not only the nurseries that have been importing Bromeliad plants from Belgium, Denmark, and the Netherlands, but any nurseries that sell these plants may be affected by the rule. Importation of Bromeliad plants in growing media can be expected to alter some marketing channels, with retailers able to buy mature plants directly from European suppliers rather than rely on the maturation of the plants at Florida nurseries.

The commenter stated that the Florida nurseries surveyed by the growers' association represented by the commenter (respondents included both domestic importers of Bromeliads and domestic Bromeliad producers) expected to lose as much as \$6.8 million in Bromeliad plant sales (28.5 percent of their market) as a result of this rulemaking. The respondents further indicated that they would be forced to eliminate as many as 70 jobs (20 percent of their workforce).

While there may be economic shifts as businesses throughout the United States react to the rule, we are unable to project authoritatively the likely size of the impact. APHIS does not have independent information regarding the possible magnitude of business losses and is not able to evaluate nurseries' future workforce needs. Additionally, while we acknowledge the commenter's concerns with regard to potential business losses by Florida nurseries, we believe that the importation of Bromeliad plants in growing media can also result in economic gains in Florida and elsewhere. Just as there may be Florida wholesale nurseries negatively affected, there may also be other businesses, such as retailers, that gain from the rule. There may be

negative employment consequences of the rule for certain wholesale nurseries, but there may also be jobs created as other businesses expand due to new marketing opportunities resulting from the rule.

Moreover, APHIS' authority to prohibit the importation of Bromeliad plants in growing media from Belgium, Denmark, and the Netherlands is based on the pest risks associated with such imports. The Agency does not have statutory authority to prohibit or restrict the importation of plants or plant products on the basis of economic or competitive considerations.

Another commenter stated that the mitigation measures in § 319.37-8(e) to which Bromeliads imported from Belgium, Denmark, and the Netherlands would be subject under this rulemaking are not adequate to prevent the spread of plant diseases such as Fusarium oxysporum f. sp. Additional measures, including a serological test, should be employed, according to the commenter.

Plants imported in growing media in accordance with the regulations in § 319.37-8(e) are subject to a systems approach, which includes stringent requirements that will not be affected by this rulemaking. Approved growing media for such imported plants are listed in § 319.78(e)(1). The regulations also require that mother stock and production plants be inspected by an inspector from APHIS or the national plant protection organization (NPPO) of the exporting country and found free from evidence of pests and diseases. Plants to be exported to the United States under § 319.87-8(e) must be grown in a greenhouse in which sanitary procedures adequate to exclude plant pests and diseases are always employed. There are also various requirements for written agreements between growers and the NPPO of the exporting country and oversight by the latter. It is our view that the systems approach required under § 319.37-8(e) is more than adequate to

prevent the dissemination and spread of plant pests and diseases, including Fusarium oxysporum f. sp., via the importation of Bromeliad plants in growing media into the United States.

One commenter stated that, as a condition for allowing Bromeliads to be exported from the European Union (EU) to the United States, APHIS should require the EU to remove the whitefly restrictions it has placed on U.S. growers exporting Bromeliads to EU countries. The commenter viewed those requirements as an unfair trade barrier for U.S. growers.

APHIS makes decisions as to whether to allow the importation of agricultural products and commodities based on an evaluation of facts, data, and available scientific evidence. While the order of processing particular requests may be influenced by trade considerations, and the components of a risk management program may be a product of negotiations between APHIS and its foreign counterparts, the ultimate determination as to whether a commodity can be safely imported is based on a determination that the product can be imported without introducing a plant pest or noxious weed into the United States. In this instance, our decision to allow the importation of Bromeliad plants of the genera Aechmea, Cryptanthus, Guzmania, Hohenbergia, Neoregelia, Tillandsia, and Vriesea from Belgium, Denmark, and the Netherlands in an approved growing medium, subject to specified growing, inspection, and certification requirements, is based on the results of our pest risk analysis, which was made available for public review along with the March 2011 proposed rule.

Part of APHIS's mission is to facilitate exports, and we make every effort to assist domestic industry in securing access to export markets. Success in this area is somewhat tied to factors out of our control, however. In general, phytosanitary measures applied by importing countries or regions to mitigate the risk posed by a particular plant or plant part exported from another country or region are determined by the particular risks posed in each case. The risk

posed by imported plants is dependent on the pests associated with the commodity in the country of origin and the pests' potential impact on the importing country. As such, reciprocal trade could occur under the same phytosanitary conditions if the pest dynamics in both the exporting and importing countries are the same, but those conditions may vary if the pest dynamics in the two countries differ. Because of climatic conditions and other factors, the risks posed to the EU by Bromeliad imports from the United States are not likely the same risks posed by imports of Bromeliads from the EU into the United States.

Two commenters, both Bromeliad growers from the Netherlands, wrote to inquire whether the plugs that their companies use to grow young Bromeliad plants would be regarded as acceptable growing media under the proposed rule. Along with their comments, they sent data sheets and pictures of the plugs they use.

The plugs used by these growers will be regarded as acceptable if they consist of one or a combination of the approved growing media listed in § 319.37-8(e)(1) and also meet the requirement contained in that paragraph that the growing media must not have been previously used. This final rule does not amend the list of approved growing media in § 319.37-8(e)(1).

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1

in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

This final rule allows the importation into the United States of Bromeliad plants in approved growing media from Belgium, Denmark, and the Netherlands. Bromeliad plants are most commonly used as houseplants or landscape ornamentals in warmer climates.

Most wholesale nurseries that sell Bromeliads within the United States are located in Florida. Based upon a survey conducted in April 2011, the Florida Nursery, Growers and Landscape Association found that there are seven nurseries in that State that import immature Bromeliad plants from Belgium, Denmark, and the Netherlands for finishing before sale to retailers. These businesses will be directly affected by the rule. Under the rule, producers in Belgium, Denmark, and the Netherlands will be able to ship mature Bromeliad plants in growing media directly to U.S. retailers. Although the rule will allow the European suppliers to bypass domestic nurseries and provide finished plants directly to U.S. retailers, such a scenario is not considered to be a certainty, given difficulties associated with shipping finished plants in pots. It is possible that the European suppliers will continue to export immature plants to domestic nurseries--but in growing media instead of in bare-root form--that will then grow them out for sale as finished plants.

U.S. nurseries that produce Bromeliad plants from seed may also be affected by the rule, to the extent that their sales are displaced by Bromeliad plants in growing media imported from Belgium, Denmark, and the Netherlands. The number of these nurseries is unknown but is estimated to be fewer than 100, most or all of which are located in California, Florida, and Texas.

Most if not all U.S. wholesale nurseries that sell Bromeliad plants are small entities under the Small Business Administration's standard of not more than \$750,000 in annual receipts. The



impact of the rule on these nurseries will depend on the volume and life-stage of the imported Bromeliads, and on the portions of the nurseries' incomes that derive from Bromeliad plant sales. Other small entities, including retail nurseries, are expected to benefit from new business opportunities created by the importation of Bromeliad plants in growing media from Belgium, Denmark, and the Netherlands.

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of Bromeliad plants from Belgium, Denmark, and the Netherlands under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA

regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.<sup>2</sup> Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

#### Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

#### § 319.37-6 [Amended]

2. In § 319.37-6, footnote 8 is redesignated as footnote 7.

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<sup>2</sup>Go to <http://www.regulations.gov#!docketDetail;D=APHIS-2010-0005>. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

§ 319.37-7 [Amended].

3. In § 319.37-7, footnote 9 is redesignated as footnote 8.

§ 319.37-13 [Amended]

4. In § 319.37-13, footnote 11 is redesignated as footnote 12.

5. In § 319.37-8, paragraph (e) introductory text, the list is amended as follows:

a. By redesignating footnote 10 as footnote 9.

b. By adding a new entry, in alphabetical order, and new footnote 10 to read as set forth below.

c. By revising footnote 11 to read as set forth below.

§ 319.37-8 Growing media.

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(e) \* \* \*

Bromeliad plants of the genera Aechmea, Cryptanthus, Guzmania, Hohenbergia, Neoregelia, Tillandsia, and Vriesea from Belgium, Denmark, and the Netherlands<sup>10</sup>

\* \* \* \* \*

Nidularium<sup>11</sup>

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Done in Washington, DC, this 28<sup>th</sup> day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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<sup>10</sup> See footnote 9.

<sup>11</sup> See footnote 9.

[FR Doc. 2011-28404 Filed 11/01/2011 at 8:45 am; Publication Date: 11/02/2011]